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Before the  
Federal Communications Commission  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of Ameritech Corp., Transferor, )  
And SBC Communications, Transferee, )  
For Consent to Transfer of Control )

CC Docket No. 98-141/

And )

In the Matter of GTE Corporation, Transferor, )  
And Bell Atlantic Corporation, Transferee, )  
For Consent to Transfer of Control )

CC Docket No. 98-184

**WORLDCOM, INC. COMMENTS IN SUPPORT OF WORLDNET EX PARTE**

Pursuant to the Federal Communications Commission's ("Commission") Public Notice released on March 26, 2001 (DA 01-764), WorldCom, Inc. ("WorldCom") hereby submits its comments in support of the February 12, 2001, *ex parte* filed by WorldNet Telecommunications, Inc. ("WorldNet"). In its *ex parte*, WorldNet requests that the Commission apply the result of the recent *ASCENT v. FCC*<sup>1</sup> decision to the Bell Atlantic/GTE Merger Order.<sup>2</sup> Because the Bell Atlantic/GTE Advanced Services Separate Affiliate Condition<sup>3</sup> is essentially the same as the SBC/Ameritech Advanced Services Separate

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<sup>1</sup> 235 F.3d 662 (D.C. Cir. 2001).

<sup>2</sup> *In re Application of GTE Corporation, Transferor, and Bell Atlantic Corporation, Transferee, For Consent to Transfer Control of Domestic and International Sections 214 and 310 Authorizations and Application to Transfer Control of a Submarine Cable Landing License*, Memorandum Opinion and Order in CC Docket No. 98-184 (rel. Jun. 16, 2000) ("*Bell Atlantic/GTE Merger Order*").

<sup>3</sup> *Id.* at Appendix D, paras. 1 – 12.

Affiliate Condition,<sup>4</sup> the D.C. Circuit's holding invalidating the SBC/Ameritech Condition applies to the Bell Atlantic/GTE Condition.

In *ASCENT*, the United States Court of Appeals for the District of Columbia Circuit vacated the Advanced Services Separate Affiliate Condition of the SBC/Ameritech Merger Order, holding simply that: “[T]he Commission may not permit an ILEC to avoid § 251(c) obligations as applied to advanced services by setting up a wholly owned affiliate to offer those services.”<sup>5</sup> The same must be true for Verizon Communications, Inc. (“Verizon”). The Bell Atlantic/GTE Merger Condition allows Verizon, an ILEC, to avoid its 251(c)<sup>6</sup> obligations in precisely the way proscribed by the court – by providing advanced services through a structurally separate affiliate created by the Commission’s Merger Order.<sup>7</sup> The *ASCENT* court succinctly described why this practice cannot be countenanced:

In short, the Act’s structure renders implausible the notion that a wholly owned affiliate providing telecommunications services with equipment originally owned by its ILEC parent, to customers previously served by its ILEC parent, marketed under the name of its ILEC parent, should be presumed to be exempted from the duties of that ILEC parent.<sup>8</sup>

It stands to reason that, if the Commission's interpretation of the Act in the SBC/Ameritech Merger Order is unreasonable, the same must hold true for the Bell Atlantic Merger Order. The latter contains essentially the same separate affiliate provisions as the

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<sup>4</sup> *In re Applications of Ameritech Corp., Transferor and SBC Communications, Inc., Transferee for Consent to Transfer Control of Corporations Holding Commission Licenses and Lines Pursuant to Section 214 and 310(d) of the Communications Act and Parts 5, 22, 24, 25, 63, 90, 95 and 101 of the Commission’s Rules*, CC Docket No. 98-141, Memorandum Opinion and Order, 14 FCC Rcd 14712 (1999) (“*SBC/Ameritech Merger Order*”), Appendix C, paras. 1 – 13.

<sup>5</sup> *ASCENT*, 235 F.3d at 668.

<sup>6</sup> 47 U.S.C. § 251(c).

<sup>7</sup> *Bell Atlantic/GTE Merger Order*, Appendix D, paras. 1 – 12.

<sup>8</sup> *ASCENT*, 235 F.3d. at 668.

former: “The package of conditions that the Applicants present to bolster the benefits of their proposed merger is patterned closely after the set of conditions that we adopted less than a year ago in the SBC/Ameritech Order.”<sup>9</sup>

If the Commission fails to apply ASCENT to the Bell Atlantic/GTE Order, the Commission would effectively disregard the clear mandate of the Court of Appeals. Indeed, as the United States Supreme Court acknowledged in *SEC v. Chenery Corp.*:<sup>10</sup> “if the [agency] action is based upon a determination of law as to which the reviewing authority of the courts does come into play, an order may not stand if the agency has misconceived the law.”<sup>11</sup> Moreover, the D.C. Circuit has clearly stated that “Congress has not given [administrative agencies] the power or authority to disagree, respectfully or otherwise, with decisions of this court.”<sup>12</sup>

The D.C. Circuit has advised the Commission that it “misconceived the law.” Because the Bell Atlantic/GTE Advanced Services Separate Affiliate Condition mimics the SBC/Ameritech Separate Affiliate Condition, the Commission cannot relieve Verizon of its obligations under section 251(c) any more than it could relieve SBC.

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<sup>9</sup> *Bell Atlantic/GTE Merger Order* at para. 248.

<sup>10</sup> 318 U.S. 80 (1943).

<sup>11</sup> *Id.* at 94.

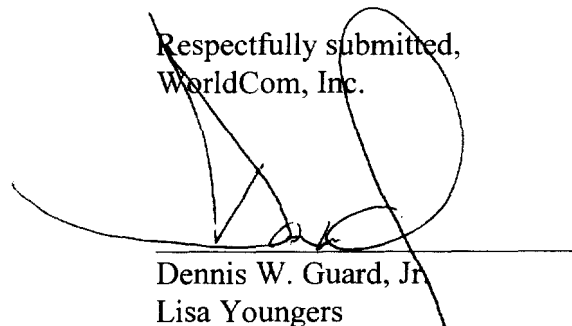
<sup>12</sup> *Yellow Taxi Co. of Minneapolis v. NLRB*, 721 F.2d 366, 382-383 (D.C. Cir. 1983); *see also Ithaca College v. NLRB*, 623 F.2d 224, 228 (2<sup>nd</sup> Cir. 1980) (“The position of any administrative tribunal whose hearings, findings, conclusions and orders are subject to direct judicial review is much akin to that of a United States District Court ... and as must a district court, an agency is bound to follow the law of the Circuit.”) (internal citations omitted); *see also PPG Industries v. NLRB*, 671 F.2d 817, 823 n.9 (4<sup>th</sup> Cir. 1982) (“We cannot ... defer to a legal determination which flouts our previous statements on the law .... It is the duty of the NLRB to apply the law of the Circuit.”).

## CONCLUSION

For the foregoing reasons, WorldCom respectfully urges the Commission modify its Bell Atlantic/GTE Merger Order to make clear that Verizon's advanced services affiliates are subject to the obligations of Section 251(c) of the Act, consistent with the holding of *ASCENT*.

Dated: April 25, 2001  
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Respectfully submitted,  
WorldCom, Inc.

A handwritten signature in black ink, appearing to read "Dennis W. Guard, Jr.", is written over a horizontal line. The signature is stylized with a large loop and a long horizontal stroke extending to the left.

Dennis W. Guard, Jr.  
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## CERTIFICATE OF SERVICE

I, Lonzena Rogers, hereby certify, that on this twenty-fifth day of April, 2001, I have caused a true and correct copy of the foregoing "Comments of WorldCom, Inc." in the matter of CC Docket 98-141 and 98-184 to be served by hand delivery on the following:

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